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**IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA**

SECOND APPELLATE DISTRICT

DIVISION ONE

In re B.T., a Person Coming Under
the Juvenile Court Law.

B271573
(Los Angeles County
Super. Ct. No. DK15102)

**LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,**

Plaintiff and Respondent,

v.

M.I.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Debra L. Losnick, Commissioner. Affirmed with directions.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

Mother appeals from orders by the juvenile court finding jurisdiction over her son B.T. and including B.T. as a protected person in a restraining order issued against her. We affirm with directions.

BACKGROUND

On January 11, 2016, Los Angeles County Department of Children and Family Services (DCFS) filed a petition alleging three-year-old B.T. was at risk of harm under Welfare and Institutions Code section 300, subdivisions (a), (b), and (j).¹ The petition alleged that mother and father (who is not a party to this appeal) had a history of violent altercations in B.T.'s presence. Mother used methamphetamine, which periodically made her incapable of caring for B.T.; mother had mental and emotional problems including bi-polar disorder, borderline schizophrenia, posttraumatic stress disorder (PTSD), and obsessive-

¹ All further statutory references are to the Welfare and Institutions Code.

compulsive disorder with suicidal ideation, for which she failed to take her prescribed medication; and mother endangered B.T. by possessing a drug pipe and ammunition in the home, within B.T.'s reach. The petition also alleged that father had a history of alcohol abuse which periodically made him incapable of caring for B.T.

Mother's five older children (with a different father) had been detained, mother had failed to reunify, and the maternal grandparents had been declared legal guardians.

Referrals dated December 30, 2015 and January 2, 2016 reported that mother and father engaged in physical and verbal violence in B.T.'s presence, and when father stated he wanted to take B.T. away from the arguing and fighting, mother escalated and scratched father on his chest, neck, and temple, resulting in a domestic violence arrest. The social workers spoke with a substance abuse case manager who had visited the family's apartment on December 30. The case manager observed that mother was very verbally abusive towards father, who disclosed a history of alcohol abuse and wanted counseling. Father wanted mother out of the house and off the lease, as he was concerned for B.T.'s safety in her care. Mother had a history of methamphetamine use, and the building manager and others confirmed that they had recently witnessed mother use methamphetamine.

Paternal grandfather (PGF) told the social worker that mother and father argued a lot, but he had not seen physical fighting. Mother's behavior had changed for the worse in the

last four or five months, including posting negative comments about father on Facebook and undergoing drastic weight loss. Father was currently sober. When mother's other children were visiting over the holidays, one of the children called maternal grandmother (MGM) and asked her to pick them up because mother and father were arguing and they did not feel safe. MGM picked up the other children and B.T., but after mother called and said she would kill herself if B.T. did not come back, maternal grandfather (MGF) brought B.T. back on January 1. Mother had also posted on Facebook that she wanted to kill herself and had written suicide notes to B.T. Father's six-year-old son Paul (of whom he had full custody, and who is not a party to this case) also lived with mother and father.

Father stated that he and mother met at a recovery center. When mother found out she was pregnant with B.T., she and he enrolled in substance abuse counseling, and until recently mother had remained sober. In the last few months, neighbors had told him she had resumed using, and he noticed a lot of weight loss. When father found the meth pipe in mother's purse, he took Paul to stay with PGF.² After mother threatened suicide and MGF brought B.T. back home against father's wishes, he and mother were arguing in the kitchen, with B.T. on the floor in the hall. Father told mother he was going to take B.T. to PGF's house, and

² Father's case worker reported that father told her he found methamphetamine in mother's possession.

mother began reading out loud to B.T. a note she had written to him, which said “ ‘[B.T.] mommy’s dead because daddy didn’t care he just yelled.’ ” Father became upset and told mother he was taking B.T. and leaving. Mother did not allow father to take B.T., and when he insisted, mother attacked father and he sustained scratches on his cheek, chest, and temple, while B.T. yelled “ ‘stop . . . stop . . . stop.’ ” Father left the house and ran to the police station, and 45 minutes later the police arrested mother who was shaking and yelling.

Father told the social worker that mother had been diagnosed with bipolar disorder and schizophrenia, and had multiple prescribed medications he was not sure she took. She also told him she had a rare terminal blood disorder but would not show him the paperwork. Father used alcohol and had drunk beer on December 29 and January 1, and had signed up for substance abuse counseling. Neither he nor mother used physical discipline on the children, but the building manager told him that other tenants heard mother yelling at the children all the time.

Mother told the social worker her ex-husband had beaten her severely and caused her PTSD. When a boyfriend attacked her, she hit him with a golf club and was incarcerated for a year (2008–2009), and had signed legal guardianship of her other children over to MGM. Everything father said was a lie. He used alcohol, would get sober for six months and then relapse. He had begun drinking after his case closed in October 2015. He was a

good man but not when he was drinking. Mother said she started drinking when she was seven or eight, smoking marijuana at 10 or 11, and using methamphetamine at 12. Her first child was born when she was 13. She claimed she had been sober since she left jail in 2009. A few weeks ago, she was very stressed out and purchased a pipe and \$10 of what she thought was methamphetamine, which she had not used. She suffered from a blood disease which caused internal bleeding. She had not been taking her prescribed psychiatric medications. She also suffered from auditory hallucinations, which made her paranoid on the day she wrote the note to B.T. about dying.

After MGM had taken the older children and B.T. home with her on December 26, mother texted MGM that she needed B.T. back but did not mention suicide. MGM brought B.T. back, and mother and father got into a fight when they took B.T. to a movie. When they returned the argument continued, and when father grabbed mother to hug her, her PTSD caused her to fight back and scratch him.

On January 11, 2016, the juvenile court found father was B.T.'s presumed father, issued a temporary restraining order against mother as to father only, and detained B.T. from mother and released him to father, ordering father to participate in weekly alcohol testing. The court granted mother monitored visitation and reunification services.

DCFS filed a jurisdiction/disposition report on March 1, 2016. The district attorney had declined to prosecute mother. Recordings showed both father and mother being

verbally abusive to each other. Father stated that two days before he found the pipe and a bag of a crystal-like substance in mother's purse in the car, he found a scale and empty plastic baggies in her closet. Mother denied knowing about the pipe and the methamphetamine, and when reminded that she had reported buying it, she claimed father told her to say that. B.T. was doing well in father's custody and attending Head Start. Mother showed an appropriate and affectionate affect during a supervised visit with B.T. on February 2.

Father had been diagnosed with depression, ADHD, and bipolar disorder, and although he was not taking his medication, that did not rise to the level of requiring an amended petition. He had cooperated with DCFS and the children were doing well in his care, but DCFS recommended that the children be declared dependents and father receive family maintenance services. A letter from father's residential case manager stated that he did not believe father required medication to be a fit parent.

A last minute information for the court filed March 1, 2016 reported that in violation of the temporary restraining order, mother had texted father on February 14 that "[i]ts death or jail," and "when I die you can tell him that it's your fault." Mother had been following father, approaching him outside of B.T.'s school and whenever he was out walking. Both mother and father had tested negative for drugs.

At the jurisdiction/disposition hearing on March 1, 2016, mother's counsel requested that the allegation under

section 300, subdivision (a) be stricken. Mother's counsel also argued that the verbal abuse was mutual, and requested that the court strike the allegation under subdivision (b) regarding mother's mental health. Counsel for DCFS stated that mother had not been taking her prescribed medication and her behavior was erratic and volatile.

The court dismissed the allegations under subdivision (a) and (j) and found true the allegations under subdivision (b). The court declared B.T. a dependent under subdivision (b), placed him in the home of father under DCFS supervision, and ordered family maintenance services, drug testing, parenting classes, and individual counseling. The court ordered mother to participate in random on demand weekly drug tests, to take a parent education class, to take her prescribed medication, and to attend individual counseling. The court also ordered her to have a monitored visitation schedule and family preservation services.

Father's counsel requested a permanent restraining order, as mother had violated the temporary restraining order by texting father, and father had filed two police reports regarding mother driving by the house. Mother's counsel opposed and called the father to the stand, arguing that father had also been violating the temporary restraining order) by texting and meeting mother to have sex. Father testified that mother had come to his home; he denied texting mother or asking her for sex. Father's counsel pointed out that father was not subject to the

temporary restraining order. Father stated that mother had tried to contact him on numerous occasions, he had called the police three times when she came to his home, and he introduced into evidence two investigative reports dated January 31, 2016 and February 23, 2016.

Mother testified that she currently had a restraining order against father, who had tried to contact her several times after the order issued. On January 21, they filed for benefits together, went out to lunch, and then had sex in the car; father had sent her a photo of himself.

Mother 's counsel admitted she violated the restraining orders on one occasion, but requested that B.T. not be on any permanent restraining order.

The juvenile court stated that if B.T. were on the restraining order, this would only preclude mother from seeing B.T. at times outside the visitation schedule. The court believed father's version of events; he had contacted the police, and mother's texts threatened father that it would be his fault if she died. It would be very damaging to B.T. to read such texts. The court issued the restraining order for one year, requiring mother to stay 100 yards away from father and from B.T. except during her scheduled visitation.

Mother filed a timely appeal from the disposition order and the restraining order.

DISCUSSION

I. Mother's challenge to the court's ruling on count b-5 is nonjusticiable.

Mother argues that there was insufficient evidence to support count b-5, one of the five sustained counts under section 300, subdivision (b), which alleged that mother had a drug pipe and ammunition in the home within B.T.'s reach.³ Mother makes no argument regarding the other four counts sustained by the juvenile court, which alleged mother's domestic violence against father in B.T.'s presence, mother's history of drug use and current use of methamphetamine, mother's mental health diagnosis and failure to take medication, and father's history and current periodical abuse of alcohol.

As mother does not challenge four of the five allegations sustained against her, the challenge to the fifth

³ Count (b)(5) alleged: "The child [B.T.'s] mother . . . placed the child in a detrimental and endangering home environment in that a drug pipe and ammunition w[ere] found in the child's home, within access of the child. Such a detrimental and endangering home environment established for the child by the mother endangers the child's physical health and safety, creates a detrimental home environment, and places the child at risk of serious physical harm, damage and danger." While mother admitted procuring a pipe and methamphetamine, there was no evidence of ammunition and no discussion of ammunition at the hearing, and mother never challenged the inclusion of "and ammunition" in the allegation.

is not justiciable. “When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) Mother does not dispute that substantial evidence supports the other allegations. For example, there is substantial evidence that mother engaged in domestic violence against father in B.T.’s presence, as alleged in b-1. “[A]ny decision we might render on the allegations [in b-5] will not result in a reversal of the trial court’s order asserting jurisdiction. The juvenile court will still be entitled to assert jurisdiction over the minor on the basis of the unchallenged allegations.” (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1492.) Mother’s challenge to b-5 is an abstract question of law, as even if we reversed the true finding on b-5, jurisdiction over B.T. would remain intact based on the four unchallenged allegations against mother. While we retain discretion to address the merits, mother does not challenge the dispositional orders or identify any potential impact the true finding on b-5 might have in the future. (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1452.) Any order we might enter would “have no practical

impact on the pending dependency proceeding, thereby precluding a grant of effective relief.” (*In re I.A.*, at p. 1491.)

Nevertheless, we exercise our discretion to note that the record contains no evidence of a drug pipe and “ammunition” found in B.T.’s home. Instead, ample evidence shows that father found a drug pipe and a baggie of a crystal-like substance in mother’s purse; mother admitted buying a pipe and methamphetamine. The words “and ammunition” must be stricken from the sustained allegation in (b)(5).

II. Sufficient evidence supported naming B.T. in the restraining order.

Mother challenges the inclusion of B.T. as a protected person in the restraining order issued by the trial court after the hearing. We review for substantial evidence, viewing the evidence in the light most favorable to DCFS, and indulging all legitimate inferences to uphold the juvenile court’s determination. (*In re C.Q.* (2013) 219 Cal.App.4th 355, 364.) Where there is insufficient evidence, the juvenile court also abuses its discretion in issuing a restraining order. (*Id.* at p. 364.) “The practical differences between these two standards in this context are not significant.” (*In re N.L.* (2015) 236 Cal.App.4th 1460, 1466.)

Section 213.5, subdivision (a) gives the juvenile court the power to issue a restraining order to prohibit any person from coming within a specified distance of a child or parent. No evidence is required that the restrained person has previously struck or otherwise battered the child, or that the

child has a reasonable apprehension of future abuse; the focus is on the safety of the petitioner. (*In re C.Q.*, *supra*, 219 Cal.App.4th at pp. 363–364.) “Monitored visitation of a child is not incompatible with a restraining order.” (*In re N.L.*, *supra*, 236 Cal.App.4th at p. 1466.)

Mother read aloud a suicide note addressed to B.T., and then attacked father and scratched him in the kitchen while three-year-old B.T. was in the hall. Mother started using methamphetamine when she was 12, and she had resumed its use, admitting that she purchased a pipe and methamphetamine which father found in her purse. Mother did not take the medication she had been prescribed for her diagnoses of bipolar disorder and schizophrenia. After the court issued a temporary restraining order protecting father, mother violated the order by texting father suicide notes (one mentioning B.T.); approaching father outside B.T.’s school and while he was out walking; and driving by father’s house, which father reported to the police.

This evidence is sufficient to support the trial court’s discretion to include B.T. as a protected person. The domestic violence incident sustained in the petition occurred in then three-year-old B.T.’s presence. Mother was using methamphetamine and not taking her prescribed medications for bipolar disorder and schizophrenia. She violated the temporary restraining order on numerous occasions as described above. Further, she included B.T. in her text messaging, telling father to tell B.T. it was father’s fault if mother died. Given B.T.’s age (four years old at the

time of the hearing), the court could reasonably infer a threat to B.T.'s safety. This case is distinguishable from *In re C.Q.*, *supra*, 219 Cal.App.4th 355, wherein there was no evidence father had engaged in inappropriate conduct since a single incident of domestic violence in the presence of a 12-year-old daughter (which precipitated the filing of the petition). Likewise, this case differs from *In re N.L.*, *supra*, 237 Cal.App.4th at pp. 1463, 1468–1469, in which mother's violent conduct did not occur in the six-year-old child's presence, and mother's subsequent actions at the child's school did not violate an earlier temporary restraining order, which had been superseded when mother was subsequently granted joint educational rights.

DISPOSITION

The case is remanded to the juvenile court to strike the words "and ammunition" from the sustained allegation in count b-5. In all other respects the orders are affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

CHANEY, Acting P. J.

LUI, J.